

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

LAMONT STEWART,

PLAINTIFF

V.

NO. 4:04CV369-P-D

CHARLIE THOMAS, ET AL,

DEFENDANTS

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

This *pro se* § 1983 conditions of confinement case was dismissed without prejudice on February 3, 2005, because there was no indication that plaintiff had exhausted the Administrative Remedy Program (ARP) of the Mississippi Department of Corrections. On February 24, 2005, plaintiff filed a document entitled Motion to Alter Judgment. This court must first determine whether to treat this as a motion to alter or amend judgment under Rule 59(e), FRCP, or as a motion for relief from judgment under Rule 60(b), FRCP. *Lavespere v. Niagara Machine & Tool Works*, 910 F.2d 167, 173 (5th Cir. 1990). If the motion is served within 10 days of the judgment, the motion will be construed under Rule 59(e); however, if it is served after that time, it will be construed under Rule 60(b). *Id.* The motion was served more than 10 days after the judgment, so it will be construed as a Rule 60(b) motion for relief from judgment.

After reviewing the original pleadings as well as the motion and the applicable law, the court concludes that the dismissal was correct in law and fact and that plaintiff has failed to produce a legal basis to alter the court's ruling. Therefore, the motion for relief from judgment is **denied**.

SO ORDERED this 25th day of April, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE